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Dkt. 37690-II-I-PCT-USA/JPW/ARC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Gary Beaudry and Paul J. Maddon
Serial No. : 08/485,163 Examiner: *K. Brown*
Filed : June 7, 1995 Group Art Unit: 1812
For : CD4 GAMMA2 AND CD4-IgG2 CHIMERAS

1185 Avenue of the Americas
New York, New York 10036
September 9, 1998

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

**COMMUNICATION REQUESTING CONSIDERATION ON THE MERITS
OF A FIRST SUBMISSION AFTER FINAL REJECTION AND
WITHDRAWAL OF FINALITY UNDER 37 C.F.R. §1.129(a)
AND PETITION FOR A FIVE-MONTH EXTENSION OF TIME**

This Communication is submitted pursuant to the provisions of 37 C.F.R. §1.129(a) to request consideration on the merits of the May 13, 1997 Amendment in Response to the November 13, 1996 Office Action as a First Submission in Response to the August 7, 1997 Final Office Action, withdrawal of finality of the August 7, 1997 Final Office Action, and Petition For A Five-Month Extension Of Time in connection with the above-identified application.

On August 7, 1997, a Final Office Action was issued on the above-identified application. Applicants filed a Notice of Appeal and Petition for A Three-Month Extension of Time on February 9, 1998. Accordingly, an appeal brief was originally due on April 9, 1998. Applicants hereby petition for a five-month extension for time. The required fee for a five-month extension of time is ONE THOUSAND and THIRTY DOLLARS (\$1,030.00). Applicants have previously established a small entity status and it is still applicable. Applicants enclose a check in the sum of ONE THOUSAND FOUR HUNDRED EIGHTY-THREE DOLLARS (\$1,483.00).

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and TWENTY-FIVE DOLLARS (\$1,425.00) to cover the extension fee of ONE THOUSAND and THIRTY DOLLARS (\$1,030.00) and the fee under 37 C.F.R. §1.17(r) of THREE HUNDRED AND NINETY-FIVE DOLLARS (\$395.00). Therefore, a response to the August 7, 1997 Final Office Action is now due September 9, 1998. Accordingly, this Communicaiton is being timely filed.

Under 37 C.F.R. §1.129(a), Applicants in an application that have been pending for at least two (2) years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365 (c), are entitled to have a first submission entered and considered on the merits after final rejection if the first submission and the fee set forth in §1.17(r) are filed prior to the filing of an appeal brief and prior to abandonment of the application.

The effective filing date of the subject application is February 8, 1991. Therefore, this application has been pending for at least two (2) years as of February 8, 1991. Applicants file this Communication prior to the filing of an Appeal Brief and prior to abandonment of the subject application. Accordingly, this Communication is being timely filed. Applicants respectfully request consideration of the First Submission In Response to the August 7, 1997 Final Office Action under 37 C.F.R. §1.129(a).

The fee under 37 C.F.R. §1.17(r) for consideration and entry of a first submission after a final rejection is THREE HUNDRED AND NINETY-FIVE DOLLARS (\$395.00) for a small entity. Applicants have previously established small entity status and it is still applicable. As stated hereinabove, applicants enclose a check in the sum of ONE THOUSAND FOUR HUNDRED and TWENTY-FIVE DOLLARS (\$1,425.00) to cover this fee.

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Under 37 C.F.R. §1.129(a), the finality of the final rejection is automatically withdrawn upon the timely filing of the first submission and the payment of the fee set forth in §1.17(r). Accordingly, applicants respectfully request that the finality of the August 7, 1997 Final Office Action be withdrawn and consideration of the First Submission.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone at the number provided below.

No fee, other than the ONE THOUSAND and THIRTY DOLLAR (\$1,030.00) fee for a five-month extension of time and the THREE HUNDRED AND NINETY-FIVE DOLLAR (\$395.00) fee under 37 C.F.R. §1.17(r), for filing a submission after final rejection is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

Albert Wai-Kit Chan

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail addressed to:
Assistant Commissioner of Patents,
Washington, D.C. 20231.

Albert Wai-Kit Chan
Albert Wai-Kit Chan
Reg. No. 36,479

Date

John P. White
Registration No. 28,678
Albert Wai-Kit Chan
Registration No. 36,479
Attorneys for Applicant(s)
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400